Supreme Court, U. S.
FILED
OCT 14 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-457

LORI WILSON,

Petitioner,

-vs-

GEORGE FIRESTONE, Secretary of State, and DOROTHY W. GLISSON, Deputy Secretary for Elections, Director, Division of Elections of the State of Florida,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

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QUESTION PRESENTED

WHETHER THE FLORIDA PROCEDURE FOR INDEPENDENT CANDIDATES FOR THE UNITED STATES SENATE TO OBTAIN ACCESS TO THE BALLOT VIOLATES THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

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OPINIONS BELOW

The opinion of the Court of Appeals is reported at 623 F.2d 345 (5th Cir. 1980). The opinion of the district court is set forth in the

Appendix to the Petition (A 4-8).

JURISDICTION

The jurisdiction requisites are adequately set forth in the Petition filed herein.

STATUTES INVOLVED

Florida Statutes, Section 99.0955 (1979)

Florida Statutes, Section 103.021 (1979)

(The above statutes are set forth in the Appendix to the Petition, A-33-37).

STATEMENT OF THE CASE

This is an action brought by the Petitioner, an announced independent candidate for the office of United

States Senator, seeking an order declaring the Florida access to the ballot provisions unconstitutional, and enjoining the enforcement thereof. The district court rejected Petitioner's contentions, and the Court of Appeals for the Fifth Circuit affirmed.

SUMMARY OF ARGUMENT

I

The equal protection clause is implicated only where persons who are similarly situated are not treated uniformly. Reynolds v. Sims, 377 U.S. 533, 12 L.Ed.2d 506, 84 S.Ct. 1362 (1964). This Court in Illinois State Board of Elections v. Socialist Workers Party, 404 U.S. 173, 59 L.Ed.2d 230, 99 S.Ct. 983 (1979), in adhering to this principle, did not preclude a state from considering the nature of different offices when providing for access to the ballot. In the case at bar, the courts below found a logical reason for classifying an independent candidate for President of the United States differently than an independent candidate for a statewide office in view of the

nature of the offices and the candidacy involved. Petitioner has not been discriminated against nor denied equal protection by this logical classification.

II.

The standards applicable to state statutes governing access to ballots have been addressed by this Court. The lower court decisions rendered in this matter are consistent with such standards and thus the issuance of a Writ by this Court is not indicated.

ARGUMENT

I

THE LOWER COURTS PROPERLY APPLIED THE PRINCIPLES OF ILLINOIS STATE BOARD OF ELECTIONS V. SOCIALIST WORKERS PARTY, 440 U.S. 173, 59 L.Ed.2d 230, 99 S.Ct. 983 (1979), IN UPHOLDING FLORIDA'S ACCESS TO THE BALLOT PROVISIONS.

The Petitioner's challenge in this case is primarily focused on the contention that this Court's decision in Illinois State Board of Elections v. Socialist Workers Party, 404 U.S. 173, 59 L.Ed.2d 230, 99 S.Ct. 983 (1979), prohibits the State of Florida from providing different requirements for an independent candidate for the United States Senate than for an independent presidential or vice-presidential candidate to obtain access to the

ballot. This Court summarily approved the Florida access-to-ballot provisions in Beller v. Askew, 403 U.S. 925, 91 S.Ct. 2248, 29 L.Ed.2d 705 (1971), and indeed, as noted by the lower court herein, this Court has approved more stringent requirements than the Florida provisions in Jenness v. Fortson, 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1971).

Petitioner contends, however, that the decision of Illinois State Board of Elections v. Socialist Workers Party, supra, requires a different result in this case. This Court in Illinois State Board did not specifically hold that a state may not consider the nature of different offices when providing for independent candidate access to the ballot, and indeed the concurring

opinion of Justice Blackmun points out the danger in a simplistic across-the-board approach to such procedures.

The district court here had previously considered precisely the same challenge in Kirk v. Smathers, Case No. TCA 78-0815 (N.D. Fla., decided June 8, 1978), which is set forth in Petitioner's Appendix A-9-A-33. In a thorough analysis, the district court upheld the Florida procedures:

> Plaintiffs' assertion that it is invidious discrimination to place conditions upon independent candidates for the Presidency and Vice-Presidency which are different from, and unequal to, those imposed upon independent candidates for all other elective offices is fatally flawed. The

argument suffers because it attempts to equate the situations of candidates for all elective offices and assumes that the same considerations must apply to all despite obvious differences in the burden each must face in attempting to gain election. It is a familiar concept that the Equal Protection Clause is implicated only where "persons standing in the same relation to the governmental action questioned or challenged" are not treated uniformly. Reynolds v. Sims, 377 U.S. 533, 565 (1964).

Florida has chosen to afford to independent and minor party candidates for President and Vice-President (the only nation-wide elective offices) a less onerous pathway to ballot position. This is not an arbitrary choice. As suggested by the testimony of Elections Director Singleton, the differing qualifications reflect a realization by the State of Florida of the unique problems posed by candidacy for nation-wide office.

Candidates for the Presidency and Vice-Presidency must campaign in many, if not all, of the states of the Union. It appears to have been the judgment of the Florida Legislature that the burden on such candidates in trying to become placed on the ballot in this and other states may be insurmountable if they are required to expend the time, resources, and campaign funds in this single state necessary to obtain the signatures of 3% of the voters. Independent candidates for all other offices are free of the difficulties attendant upon far-flung presidential campaigns, and may concentrate their efforts in order to satisfy the 3% requirement.

Mr. Justice Stewart's comments for the Supreme Court in Jenness v. Fortson, 403 U.S. 431, 441-42 (1971), are particularly appropriate in the present context:

> The fact is that there are obvious differences in kind

> between the needs and potentials of a political party with historically established broad support, on the one hand, and a new or small political organization on the other. Georgia has not been guilty of invidious discrimination in recognizing these differences and providing different routes to the printed ballot. Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike, a truism well illustrated in Williams v. Rhodes, supra.

The case at bar does not involve an instance where the State of Florida has imposed different requirements upon persons who are similarly situated. The requirement of gathering petition signatures of 3 percent of the voters applies equally to other candidates seeking the same office as plaintiff Kirk, including

> major party candidates who cannot pay the filing fee, Florida Statutes §99.095, and minor party candidates, Florida Statutes §99.096. There are significant dissimilarities between the campaign problems faced by national, as opposed to state-wide or local candidates. It does not offend Fourteenth Amendment guarantees for Florida to take these differences into account when fashioning rules to govern the placing of independent candidates' name on the ballot.

Id., A-18 through A-20.

Both the district court and the Court of Appeals found that the Florida provisions are not analogous to the Illinois procedure struck down in Illinois State Board of Elections v. Socialist Workers Party, supra. The decisions here properly apply the principles set forth by this Court.

and accordingly the Petition for Writ of Certiorari filed herein should be denied.

II.

THIS CASE DOES NOT PRESENT SPECIAL OR IMPORTANT REASONS FOR GRANTING A WRIT OF CERTIORARI.

Rule 19 of the Supreme Court Rules provides in part that a writ of certiorari ". . . will be granted only where there are special or important reasons therefor." Rule 19(b) of the Supreme Court Rules then sets forth an indication of the reasons considered in the disposition of a petition for writ of certioari:

> Where a court of appeals has . . . decided an important question of federal law which has not been, but should

> be settled by this Court, or has decided a federal question in a way in confli with applicable decisions of this Court. . .

As indicated above, this Court has previously considered the appropriate standards governing state access to ballot provisions. The decision of the lower court herein properly follows the standards set out by this Court and Petitioner has demonstrated no special or important reason for issuance of a Writ of Certiorari.

CONCLUSION

For the foregoing reasons, Respondents George Firestone, Secretary of State of the State of Florida, and Dorothy W. Glisson, Deputy Secretary for Elections of the State of Florida, submit that the questions upon which this cause depends are insufficient to support the issuance of a Writ of Certiorari. Respondents accordingly move this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondents' Brief in Opposition to the Petition for Writ of Certiorari to the United States Court of Appeals Fifth Circuit has been furnished to Petitioner's Counsel, the Honorable Barry Richard, ROBERTS, MILLER, BAGGETT, LaFACE, RICHARD & WISER, Post Office Drawer 1838, Tallahassee, Florida 32302, by U.S. Mail, this _____day of October, 1980.

RICHARD A. HIXSON
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